

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**THE STATE OF MISSISSIPPI, EX REL.  
JIM HOOD, ATTORNEY GENERAL  
FOR THE STATE OF MISSISSIPPI**

**Plaintiff,**

**v.**

**ENTERGY MISSISSIPPI, INC., ET AL.**

**Defendants.**

**No.: 3:08-CV-780-CWR-LRA**

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**DEFENDANTS' NON-CONFIDENTIAL MEMORANDUM IN SUPPORT OF THEIR  
MOTION FOR LEAVE TO FILE EXHIBIT UNDER SEAL**

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Defendants<sup>1</sup>, pursuant to L.U. Civ. R. 79(e)(3), through counsel, submit this Non-Confidential Memorandum in Support of Motion For Leave to File Exhibit Under Seal, and state as follows:

**I. RELEVANT BACKGROUND**

On July 23, 2018, Defendants filed their Motion for Leave to File Exhibit Under Seal, and their Rebuttal Memorandum in Support of Defendants' Motion for Summary Judgment Based on State or Federal Preemption (Doc. 310).

In support of their Rebuttal Memorandum, Defendants rely on the following exhibit, which will be conventionally filed with the Court:

(1) Exhibit A: Excerpts from Feb. 23, 2018 Deposition of Dr. David DeRamus.

The exhibit listed above ("the exhibit") contains confidential and/or highly sensitive business information. A Protective Order agreed to by the parties was entered into in this case on May 17, 2017

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<sup>1</sup> Entergy Mississippi, Inc., Entergy Corporation, Entergy Services, Inc. and Entergy Power, Inc.

(Doc. 126). That Protective Order specifically requires that, when the parties file any confidential information among the Court records, such filing “shall be under seal, and shall not occur until the party seeking to so file or use the Confidential Information has obtained a separate Court order authorizing and requiring the sealing of the Confidential Information.” *Id.* at ¶ 9. Accordingly, Defendants request that the Court grant Defendants leave to file the exhibit under seal.

## II. LEGAL ARGUMENTS

As stated, the exhibit contains both confidential and high sensitive business information. While motions to seal are to be granted cautiously, “sealing may be appropriate where order incorporate confidential business information.” *N. Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182, 204 (5th Cir. 2015). Defendants are aware that “a court must use caution in exercising its discretion to place records under seal,” and that consideration of such motion must take into account the strong presumption that court records are public and weigh that principle against any countervailing interests that would be served by closure. *United States v. Holy Land Found. For Relief and Dev.*, 624 F.3d 685, 686-91 (5th Cir. 2010).

In the instant case, the exhibit is relevant evidence supporting Defendants’ rebuttal in support of its motion for summary judgment, and no legitimate purpose is served by the exhibits being publicly accessible on the Court’s PACER/ECF system. Defendants do not wish to jeopardize the confidentiality of certain highly sensitive data and information of the parties involved in this suit.

As stated above, the parties agreed to a Protective Order (Doc. 126), pursuant to which the subject exhibits have been identified as “Confidential” and/or containing “Highly Sensitive Information.” *See Seals v. Herzing Inc.-New Orleans*, 482 Fed. Appx. 893, 896 (5th Cir. 2012) (affirming district court’s grant of motion to seal in part because the parties had in place an agreement to maintain confidentiality).

For purposes of Local Rule 79, the confidential and highly sensitive information contained in the exhibit constitutes clear and compelling reasons to seal the exhibit from public access only, and this action would be a narrowly tailored remedy under the circumstances. While the exhibit is relevant and warrants the Court's consideration as to factual and legal issues, no public interest is served by public disclosure, and there will be no prejudice to the public interest by allowing the exhibit to be submitted under seal.

Provided the Court grants Defendants' motion, all conventionally filed documents will comply with the requirements of L. U. Civ. R. 79(e). Pursuant to L. U. Civ. R. 79(e)(3)(B)(2), Defendants request that the exhibit "[b]e sealed from public access only, with CM/ECF access permitted to the litigants' counsel." Further, the exhibit should be sealed for the duration of this case until full and final judgment and exhaustion of any appeals, at which time Defendants request that the exhibit be destroyed.

This 23<sup>rd</sup> day of July, 2018.

Respectfully submitted,

ENTERGY MISSISSIPPI, INC.,  
ENTERGY CORPORATION,  
ENTERGY SERVICES, INC. and  
ENTERGY POWER, INC., Defendants

By /s/ Roy D. Campbell

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

This the 23<sup>rd</sup> day of July, 2018.

/s/ Roy D. Campbell  
OF COUNSEL